

Message Text

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COME-00 FRB-03 INR-07 NSAE-00 XMB-02 OPIC-03 LAB-04

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SUBJECT: COUNTERVAILING DUTIES

FOR ASSISTANT SECRETARY ROGERS

1. U.S. POSITION ON COUNTERVAILING DUTY ISSUE IS STATED IN
TRADE SECTION OF YOUR BRAZIL COUNTRY PAPER.

2. YOU MAY WISH TO REFER TO THE FOLLOWING BACKGROUND
INFORMATION ON THE CHANGES IN THE COUNTERVAILING DUTY
LAW WHICH WERE MADE BY THE TRADE ACT OF 1974.

3. THE TRADE ACT AMENDS THE COUNTERVAILING DUTY SECTIONS
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OF THE TARIFF ACT OF 1930 IN A NUMBER OF IMPORTANT

RESPECTS. THE CHANGES ARE CONTAINED IN TITLE III, WHICH DEALS WITH "UNFAIR" AND "ILLEGAL" TRADE PRACTICES ADVERSELY AFFECTING U.S. COMMERCE. THE USE OF THE TERM "UNJUSTIFIABLE" REFERS TO RESTRICTIONS WHICH ARE ILLEGAL UNDER INTERNATIONAL LAW OR INCONSISTENT WITH INTERNATIONAL OBLIGATIONS. "UNREASONABLE" REFERS TO RESTRICTIONS WHICH ARE NOT NECESSARILY ILLEGAL BUT WHICH NULLIFY OR IMPAIR BENEFITS ACCRUING TO THE UNITED STATES UNDER TRADE AGREEMENTS OR WHICH OTHERWISE DISCRIMINATE AGAINST OR BURDEN U.S. COMMERCE.

4. ALTHOUGH THE PREVIOUS LEGISLATION WAS MANDATORY, IT DID NOT COMPEL THE SECRETARY OF TREASURY TO ACT WITHIN ANY SPECIFIED PERIOD OF TIME. THE TRADE ACT PROVIDES THAT TREASURY MUST COMMENCE ITS INVESTIGATION OF A COUNTERVAILING DUTY CASE UPON RECEIPT OF A PETITION FROM A COMPLAINANT. NOTICE OF RECEIPT OF SUCH A COMPLAINT WOULD BE PUBLISHED IN THE FEDERAL REGISTER. THEREAFTER TREASURY WILL HAVE SIX MONTHS IN WHICH TO MAKE A PRELIMINARY DETERMINATION AS TO THE EXISTENCE OF A BOUNTY OR GRANT. IF THE INITIAL DETERMINATION INDICATES THE LIKELY EXISTENCE OF A BOUNTY OR GRANT, TREASURY WILL HAVE AN ADDITIONAL SIX MONTHS TO NEGOTIATE WITH THE PARTICULAR FOREIGN COUNTRY IN AN ATTEMPT TO OBTAIN THE ELIMINATION OF THE BOUNTY OR GRANT. IF THE BOUNTY OR GRANT, OR ANY PORTION THEREOF, REMAINED IN EFFECT, THE SECRETARY OF THE TREASURY WOULD THEN BE REQUIRED TO ISSUE A FINAL COUNTERVAILING DUTY ORDER FOLLOWING THE END OF THE SECOND SIX-MONTH PERIOD (TOTAL TIME PERIOD OF ONE YEAR FROM THE DATE OF PETITION). HOWEVER, HE MAY SUSPEND THE APPLICATION OF THE ORDER IF HE DETERMINES THAT:

(A) ADEQUATE STEPS HAD BEEN TAKEN SUBSTANTIALY TO REDUCE OR ELIMINATE THE ADVERSE EFFECT OF THE BOUNTY OR GRANT;

(B) THERE IS A REASONABLE PROSPECT THAT SUCCESSFUL TRADE AGREEMENTS PROVIDING FOR THE REDUCTION OR ELIMINATION OF NON-TARIFF BARRIERS WILL BE ENTERED LIMITED OFFICIAL USE

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INTO; AND

(C) THE IMPOSITION OF COUNTERVAILING DUTIES WOULD BE LIKELY TO SERIOUSLY JEOPARDIZE NEGOTIATIONS.

5. THE AUTHORITY OF TREASURY TO SUSPEND COUNTERVAILING DUTIES WILL EXPIRE FOUR YEARS FROM THE DATE OF ENACTMENT OF THE BILL. (THIS AUTHORITY DOES NOT, HOWEVER, EXTEND

TO EXISTING CASES CONCERNING NON-RUBBER FOOTWEAR.) THE INITIAL DETERMINATION, THE RESULTS OF ANY NEGOTIATION AND ANY FINAL DETERMINATION (INCLUDING SUSPENSION) WILL BE MADE PUBLIC.

6. IF TREASURY DECIDES TO SUSPEND THE IMPOSITION OF COUNTERVAILING DUTIES, IT MUST REPORT SUCH A DETERMINATION AND THE REASONS THEREFOR TO THE CONGRESS. AT ANY TIME THEREAFTER, EITHER HOUSE OF CONGRESS COULD ADOPT A DISAPPROVAL RESOLUTION AND THUS REQUIRE TREASURY TO IMPOSE COUNTERVAILING DUTIES.

7. COUNTERVAILING DUTY ORDERS BY THE SECRETARY OF TREASURY WOULD GO INTO EFFECT IMMEDIATELY UPON PUBLICATION OF THE ORDER IN THE FEDERAL REGISTER (NO LATER THAN ONE YEAR AFTER THE DATE A PETITION IS SUBMITTED TO TREASURY). IN THE CASE OF A CONGRESSIONAL OVER-RIDE, NOTICE OF COUNTERVAILING DUTIES WOULD BE PUBLISHED AND SUCH DUTIES WOULD GO INTO EFFECT THE DAY AFTER THE DATE OF THE ADOPTION OF THE RESOLUTION OF DISAPPROVAL.

8. FURTHERMORE, THE COUNTERVAILING DUTY LAW HAS BEEN EXTENDED TO COVER NON-DUTIABLE ITEMS. HOWEVER, IN THE CASE OF SUCH ITEMS, THE TRADE ACT REQUIRES AN AFFIRMATIVE INJURY DETERMINATION BY THE TARIFF COMMISSION (INTERNATIONAL TRADE COMMISSION), BUT ONLY INsofar AS THE INTERNATIONAL OBLIGATIONS OF THE U.S. REQUIRE SUCH A DETERMINATION.

9. IN ACCORDANCE WITH THE NEW PROCEDURES ESTABLISHED BY THE TRADE ACT, TREASURY HAS DECIDED TO PUBLISH IN THE FEDERAL REGISTER ALL PENDING COUNTERVAILING DUTY CASES. CURRENTLY PENDING COUNTERVAILING DUTY CASES INVOLVING LIMITED OFFICIAL USE

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LATIN AMERICAN COUNTRIES INCLUDE LEATHER HANDBAGS FROM BRAZIL, STEEL PRODUCTS AND PROCESSED ASPARAGUS (TWO COMPLAINTS) FROM MEXICO, AND LEATHER GOODS FROM ARGENTINA. (FYI: WE EXPECT THIS LAST COMPLAINT TO BE WITHDRAWN SHORTLY. IF YOU ARE QUERIED REGARDING THE CASE, YOU MAY SAY THAT THIS COMPLAINT IS IN THE PROCESS OF BEING WITHDRAWN. END FYI.) ALL OF THE ABOVE CASES WERE PUBLISHED IN JANUARY 1975 AND WILL REQUIRE A PRELIMINARY FINDING BY JULY 1975. INGERSOLL

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